

INDUSTRIAL ASSISTANCE FUND

AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David Clark

LONG TITLE

General Description:

This bill modifies and enacts provisions related to the Industrial Assistance Fund.

Highlighted Provisions:

This bill:

- ▶ provides a definition for economic opportunities;
- ▶ provides that up to 20% of the monies in the Industrial Assistance Fund may be used

for economic opportunities; and

- ▶ provides qualifications for entities seeking Industrial Assistance Fund monies for the financing of economic opportunities.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-2-1202, as last amended by Chapter 14, Laws of Utah 2003

9-2-1203, as last amended by Chapter 14, Laws of Utah 2003

9-2-1204, as last amended by Chapters 14 and 88, Laws of Utah 2003

9-2-1205, as last amended by Chapters 14 and 291, Laws of Utah 2003

9-2-1205.5, as last amended by Chapter 14, Laws of Utah 2003

ENACTS:

9-2-1205.8, Utah Code Annotated 1953

REPEALS:

9-2-1206, as renumbered and amended by Chapter 241, Laws of Utah 1992

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **9-2-1202** is amended to read:

9-2-1202. Definitions.

As used in this part:

(1) "Administrator" means the executive director of the Department of Community and Economic Development or the executive director's designee.

(2) "Board" means the Board of Business and Economic Development.

(3) "Company creating an economic impediment" means a company that discourages economic development within a reasonable radius of its location because of:

(a) odors;

(b) noise;

(c) pollution;

(d) health hazards; or

(e) other activities similar to those described in Subsections (3)(a) through (d).

(4) "Economic opportunities" means unique business situations or community circumstances which lend themselves to the furtherance of the economic interests of the state by providing a catalyst or stimulus to the growth or retention, or both, of commerce and industry in the state.

~~[(4)]~~ (5) "Economically disadvantaged rural area" means a geographic area designated by the board under Section 9-2-1207.

~~[(5)]~~ (6) "Fund" means the restricted account known as the Industrial Assistance Fund created in Section 9-2-1203.

~~[(6)]~~ (7) "Replacement company" means a company locating its business or part of its business in a location vacated by a company creating an economic impediment.

~~[(7)]~~ (8) "Targeted industry" means an industry or group of industries targeted by the

board, under Section 9-2-1207, for economic development in the state.

Section 2. Section **9-2-1203** is amended to read:

9-2-1203. Industrial Assistance Fund created.

(1) There is created within the General Fund a restricted account known as the Industrial Assistance Fund of which:

(a) up to 50% shall be used in economically disadvantaged rural areas[-]; and

(b) up to 20% may be used to take timely advantage of economic opportunities as they arise.

(2) The fund shall be administered by the administrator under the policy direction of the board.

(3) The administrator may hire appropriate support staff.

(4) The cost of administering the fund shall be paid from monies in the fund.

(5) Interest accrued from investment of monies in the fund shall remain in the fund.

Section 3. Section **9-2-1204** is amended to read:

9-2-1204. Loans, grants, and assistance -- Repayment -- Earned credits.

(1) (a) A company that qualifies under Section 9-2-1205 may receive loans, grants, or other financial assistance from the fund for expenses related to establishment, relocation, or development of industry in Utah.

(b) A company creating an economic impediment that qualifies under Section 9-2-1205.5 may in accordance with this part receive loans, grants, or other financial assistance from the fund for the expenses of the company creating an economic impediment related to:

(i) relocation to a rural area in Utah of the company creating an economic impediment;
and

(ii) the siting of a replacement company.

(c) An entity offering an economic opportunity that qualifies under Section 9-2-1205.8 may:

(i) receive loans, grants, or other financial assistance from the fund for expenses related to the establishment, relocation, retention, or development of industry in the state; and

(ii) include infrastructure or other economic development precursor activities that act as a catalyst and stimulus for economic activity likely to lead to the maintenance or enlargement of the state's tax base.

(2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the structure, amount, and nature of any loan, grant, or other financial assistance from the fund.

(b) Loans made under Subsection (2)(a) shall be structured so the intended repayment or return to the state, including cash or credit, equals at least the amount of the assistance together with an annual interest charge as negotiated by the administrator.

(c) Payments resulting from grants awarded from the fund shall be made only after the administrator has determined that the company has satisfied the conditions upon which the payment or earned credit was based.

(3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a system of earned credits that may be used to support grant payments or in lieu of cash repayment of a fund loan obligation.

(ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors determined by the administrator, including:

(A) the number of Utah jobs created;

(B) the increased economic activity in Utah; ~~and~~ or

(C) other events and activities that occur as a result of the fund assistance.

(b) (i) The administrator shall provide for a system of credits to be used to support grant payments or in lieu of cash repayment of a fund loan when loans are made to a company creating an economic impediment.

(ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors determined by the administrator, including:

(A) the number of Utah jobs created;

(B) the increased economic activity in Utah; ~~and~~ or

(C) other events and activities that occur as a result of the fund assistance.

(4) (a) A cash loan repayment or other cash recovery from a company receiving

assistance under this section, including interest, shall be deposited into the fund.

(b) The administrator and the Division of Finance shall determine the manner of recognizing and accounting for the earned credits used in lieu of loan repayments or to support grant payments as provided in Subsection (3).

(5) (a) At the end of each fiscal year, after the transfer of surplus General Fund revenues has been made to the General Fund Budget Reserve Account as provided in Section 63-38-2.5, any additional unrestricted, undesignated General Fund balance shall be earmarked to the Industrial Assistance Fund in an amount equal to any credit that has accrued under this part.

(b) These credit amounts may not be used for purposes of the fund as provided in this part until appropriated by the Legislature.

Section 4. Section **9-2-1205** is amended to read:

9-2-1205. Qualification for assistance.

(1) Except as provided in Section 9-2-1205.5 or Section 9-2-1205.8, the administrator shall determine which industries, companies, and individuals qualify to receive monies from the fund. Except as provided by Subsection (2), to qualify for financial assistance from the fund, an applicant shall:

(a) demonstrate to the satisfaction of the administrator that the applicant will expend funds in Utah with employees, vendors, subcontractors, or other businesses in an amount proportional with monies provided from the fund at a minimum ratio of 2 to 1 per year or other more stringent requirements as established from time to time by the board for a minimum period of five years beginning with the date the loan or grant was approved;

(b) demonstrate to the satisfaction of the administrator the applicant's ability to sustain economic activity in the state sufficient to repay, by means of cash or appropriate credits, the loan provided by the fund; and

(c) satisfy other criteria the administrator considers appropriate.

(2) (a) The administrator may exempt an applicant from the requirements of Subsection (1)(a) or (1)(b) if:

(i) the financial assistance is provided to an applicant for the purpose of locating all or any

portion of its operations to an economically disadvantaged rural area;

(ii) the applicant is part of a targeted industry; [or]

(iii) the applicant is a quasi-public corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, or Title 63E, Chapter 2, Independent Corporations Act, and its operations, as demonstrated to the satisfaction of the administrator, will provide significant economic stimulus to the growth of commerce and industry in the state[-]; or

(iv) the applicant is an entity offering an economic opportunity under Section 9-2-1205.8.

(b) The administrator may not exempt the applicant from the requirement under Subsection 9-2-1204(2)(b) that the loan be structured so that the repayment or return to the state equals at least the amount of the assistance together with an annual interest charge.

(3) The administrator shall:

(a) for applicants not described in Subsection (2)(a):

(i) make findings as to whether or not each applicant has satisfied each of the conditions set forth in Subsection (1); and

(ii) monitor the continued compliance by each applicant with each of the conditions set forth in Subsection (1) for five years;

(b) for applicants described in Subsection (2)(a), make findings as to whether the economic activities of each applicant has resulted in the creation of new jobs on a per capita basis in the economically disadvantaged rural area or targeted industry in which the applicant is located;

(c) monitor the compliance by each applicant with the provisions of any contract or agreement entered into between the applicant and the state as provided in Section [~~9-2-1206~~] 9-2-1205.1; and

(d) make funding decisions based upon appropriate findings and compliance.

Section 5. Section **9-2-1205.5** is amended to read:

9-2-1205.5. Financial assistance to companies that create economic impediments.

(1) (a) The administrator may provide monies from the fund to a company creating an economic impediment if that company:

(i) applies to the administrator;

- (ii) relocates to a rural area in Utah; and
- (iii) meets the qualifications of Subsection (1)(b).

(b) Except as provided by Subsection (2), to qualify for financial assistance from the fund, a company creating an economic impediment shall:

(i) demonstrate to the satisfaction of the administrator that the company creating an economic impediment, its replacement company, or in the aggregate the company creating the economic impediment and its replacement company:

(A) will expend funds in Utah with employees, vendors, subcontractors, or other businesses in an amount proportional with monies provided from the fund at a minimum ratio of 2 to 1 per year or other more stringent requirements as established from time to time by the board for a minimum period of five years beginning with the date the loan or grant was approved; and

(B) can sustain economic activity in the state sufficient to repay, by means of cash or appropriate credits, the loan provided by the fund; and

- (ii) satisfy other criteria the administrator considers appropriate.

(2) (a) The administrator may exempt a company creating an economic impediment from the requirements of Subsection (1)(b)(i)(A) if:

(i) the financial assistance is provided to a company creating an economic impediment for the purpose of locating all or any portion of its operations to an economically disadvantaged rural area; or

- (ii) its replacement company is part of a targeted industry.

(b) The administrator may not exempt a company creating an economic impediment from the requirement under Subsection 9-2-1204(2)(b) that the loan be structured so that the repayment or return to the state equals at least the amount of the assistance together with an annual interest charge.

(3) The administrator shall:

(a) make findings as to whether or not a company creating an economic impediment, its replacement company, or both, have satisfied each of the conditions set forth in Subsection (1);

- (b) monitor the compliance by a company creating an economic impediment, its

replacement company, or both, with:

- (i) each of the conditions set forth in Subsection (1); and
- (ii) any contract or agreement under Section ~~[9-2-1206]~~ 9-2-1205.1 entered into between:
 - (A) the company creating an economic impediment; and
 - (B) the state; and
- (c) make funding decisions based upon appropriate findings and compliance.

Section 6. Section **9-2-1205.8** is enacted to read:

9-2-1205.8. Financial assistance to entities offering economic opportunities.

(1) Subject to the duties and powers of the board under Section 9-2-204, the administrator may provide monies from the fund to an entity offering an economic opportunity if that entity:

- (a) applies to the administrator; and
- (b) meets the qualifications of Subsection (2).
- (2) The applicant shall:

(a) demonstrate to the satisfaction of the administrator the nature of the economic opportunity and the related benefit to the economic well-being of the state by providing evidence documenting the logical and compelling linkage, either direct or indirect, between the expenditure of monies necessitated by the economic opportunity and the likelihood that the state's tax base will be maintained or enlarged;

(b) demonstrate how the funding request will act in concert with other state, federal, or local agencies to achieve the economic benefit;

- (c) demonstrate how the funding request will act in concert with free market principles;
- (d) satisfy other criteria the administrator considers appropriate; and
- (e) be either:

(i) an entity whose purpose is to exclusively or substantially promote, develop, or maintain the economic welfare and prosperity of the state as a whole, regions of the state, or specific components of the state; or

- (ii) a company or individual that does not otherwise qualify under Section 9-2-1205.

(3) Subject to the duties and powers of the board under Section 9-2-204, the administrator shall:

(a) make findings as to whether an applicant has satisfied each of the conditions set forth in Subsection (2);

(b) establish benchmarks and timeframes in which progress toward the completion of the agreed upon activity is to occur;

(c) monitor compliance by an applicant with any contract or agreement entered into by the applicant and the state as provided by Section 9-2-1205.1; and

(d) make funding decisions based upon appropriate findings and compliance.

Section 7. Repealer.

This bill repeals:

Section 9-2-1206, Agreements.